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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,336	08/09/2001	Timur Mehmet Momol	UF-258CXC1	4420

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EXAMINER

COE, SUSAN D

ART UNIT PAPER NUMBER

1654

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,336

Applicant(s)

MOMOL ET AL.

Examiner

Susan D. Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed February 17, 2005, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1, 13 and 21 have been cancelled.
3. Claim 22 has been added and is examined on the merits.

### ***Claim Rejections - 35 USC § 103***

4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soler-Serratosa (Nematropica (1996), vol, 26, no. 1, pp. 57-71) in view of Momol et al. (Phytopathology (June 1999), vol. 89, no. 6, pp. S54) and Canadian Pat. Appl. No. 2,012,288.

Soler-Serratosa teaches a method for killing plant parasites in the soil prior to planting by treating soil with a composition that contains thymol and ethanol. The reference teaches waiting at least two weeks after treatment with the thymol and ethanol before planting (see "Materials and Methods). The reference teaches that the thymol composition shows phytotoxic effects on the plant but that these effects can be diminished if the delay between soil treatment and planting is extended (see page 67, second column). Thus, Soler-Serratosa teaches a method reducing plant parasites by treating the soil prior to planting using a composition containing thymol and ethanol. The reference teaches waiting at least two weeks before planting and states that the waiting period can be modified in order to best achieve the desired results. However, the reference does not specifically teach that this method of soil treatment can be used to control *Ralstonia solenacearum* in tomatoes.

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Momol teaches that thymol can be used to control *R. solanacearum* in tomatoes. Thus, a person of ordinary skill in the art would reasonably expect that the soil treatment method of Soler-Serratosa could be used to control this specific plant pathogen prior to planting the tomatoes. Based on this reasonable expectation of success, a person of ordinary skill in the art would be motivated to modify the method taught by Soler-Serratosa to include treating the soil for *R. solanacearum* prior to planting of tomatoes.

Thus, Soler-Serratosa and Momol taken together are considered to teach applying a composition containing thymol and ethanol to the soil to remove *R. solanacearum* prior to planting tomatoes. However, these references do not specifically teach using detergent in the thymol/ethanol composition. CA '288 teaches using surfactants (detergents) in compositions containing thymol and alcohols (see page 4). This combination is taught to have better results when applied to the soil, to be more economical, and to be more environmentally sound (see pages 3 and 4). Based on this teaching of the benefits of a combination of thymol, alcohol, and surfactants, a person of ordinary skill in the art would be motivated to add surfactants to the composition of thymol and ethanol taught by Soler-Serratosa. Thus, all three references taken together are considered to teach the method claimed by applicant.

5. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

*Susan D. Coe*  
*5-10-05*  
Susan D. Coe  
Primary Examiner  
Art Unit 1654